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In The

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 254

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.

[illegible]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 234

PAUL GINSBURG, Petitioner,

v.

HORACE STERN and PATRICK N. BOLSINGER, Respondents.

PETITIONER'S REPLY BRIEF

In the supposed Brief in Opposition of the respondents, they have failed to comply with the provisions of paragraph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court". As a matter of fact, instead of presenting a brief in opposition pursuant to the Rules of this Honorable Court, the respondents actually have attempted to misrepresent the cause through re-presenting it in a self-serving way, in violation of the record facts and the applicable law and Rules of Court.

Contrary to the usual and accepted practice relating to briefs in opposition filed in this Honorable Court, the respondents have offered a Question Presented, a Statement of the Case and an Argument, obviously intended to confuse the true Questions Presented in the Petition,

distort the real Statement of the Case, and then discon-cert the Reasons Relied on for the Allowance of the Writ,— which countention will be completely estab-lished herein by your petitioner.

In the respondents' unauthorized Question Pre-sented, it is evident that they have overlooked or mis-apprehended one of this Honorable Court's most re-peatedly proclaimed pronouncements, that "the denial of certiorari does not imply approval of the decision for which review is sought or of its supporting opinion". See *Elgin, Joliet & Eastern Rwy. Co. v. Gibson,* 355 U. S. 897 (1957), citing *Brown v. Allen,* 344 U. S. 443.

When the respondents added to their Question Pre-sented that since the prior denial of certiorari "no new or additional facts have been presented", they made a misstatement that could not have been more obvious. The new and additional facts obviously presented herein are that the lower Courts will not perform their func-tions in connection with petitioner's right to be heard, regardless of how many times relief is sought therein under the Constitution and laws of the United States; and further that this Honorable Court in denying the prior Petition for Writ of Certiorari at No. 634 October Term, 1961, acted upon the premise that reviewing Courts will not review unadjudicated issues, and that the lower Courts should and would adjudicate the issues involved herein when your petitioner re-presented them below.

It is a matter of record herein that the lower Courts have never made an adjudication on the merits of any of the issues involved herein, stubbornly refusing to afford your petitioner his right to a single hearing on

the issue of the fraud and misconduct of his adversaries in procuring the entry of fraudulent judgments against him, and they never will do so unless ordered to by this Court. What more compelling reasons could call for an exercise of this Court's power of supervision?

At this point, it is apparent that the respondents at the outset of their supposed Brief in Opposition have confirmed your petitioner's right to a review in this Honorable Court.

The true Statement of the Case is contained in the Petition (pp. 5-9). The respondents' unpermitted Statement of the Case (pp. 2-3) is a reprehensible attempt to persuade this Court to overlook or forgive their then secret acts of misconduct through which they (a) obtained fraudulent judgments for unallowable costs; then (b) attached the following accounts of your petitioner in the Mellon National Bank and Trust Company:

Paul Ginsburg, Account No. 1 with a balance of $1,736.33
Paul Ginsburg, Account No. 2 with a balance of $1,161.89
Paul Ginsburg, Account No. 3 with a balance of $ 999.46
Paul Ginsburg, Account No. 4 with a balance of $1,326.15
Paul Ginsburg, Account No. 5 with a balance of $ 995.32

TOTAL FUNDS ATTACHED $6,219.15

without any notice whatever to your petitioner; thereupon (c) secretly collected the amounts of those fraudulent judgments from the garnishee (the attorneys for the respondents herein also being the attorneys for the garnishee herein); and (d) after all of said unprofessional acts constituting the fraud, falsely represented to this Honorable Court (p. 2) that the costs were not only paid in full but the judgments satisfied.

It is true that the attorneys for the respondents, as attorneys also for the garnishee, were easily able to and did collect in full from the garnishee Mellon National Bank and Trust Company; but it is not true, as represented, that the judgments against your petitioner have been satisfied as of this 25th day of July, 1963.

Your petitioner has been a member in good standing of the Bar of State and Federal Courts since October 8, 1932, and has twice been elected an Officer of the Allegheny County Bar Association in his native Pittsburgh. Until the fraudulent and secret Attachment Execution of his accounts at the Mellon National Bank and Trust Company on August 13, 1958, no such proceeding had ever been commenced against him. It should be obvious from his then rather substantial balances at the Mellon Bank, which he had maintained even more substantially for many years and his family for generations before him, as well as his exceptional reputation for immediate payment of every due obligation, that these respondents would never have had any problem whatever in collecting their costs from him if they were legally allowable and due (without benefit of judgments and/or attachment execution proceedings thereon). Under such circumstances, petitioner is justified in arguing that the fraud and misconduct of his adversaries was a deliberate illegal maneuver and trick by which the respondents could collect their unnecessary and unallowable costs to which they were not entitled, from your petitioner.

The Unauthorized Five Arguments (p. 4) Of The Respondents Can Be Disposed of With Dispatch.

1. This Court's prior denial of certiorari at No. 634 October Term, 1[illegible], cannot be advocated as a bar to the instant Petition by reason of the authoritatively supported Reply hereinabove made.

2. The naive and unsophisticated Argument that "The question raised is now moot, inasmuch as the costs have been paid with plaintiff's funds, and the judgments satisfied", is preposterous. Would it not be analogous for an Officer of the garnishee, the Mellon National Bank and Trust Company, to take the position that the Attorney General should drop a prosecution against him for embezzlement, because he had already dissipated the funds?

3. On numerous occasions the petitioner has cited the applicable Rules of the Court of Appeals to the attorneys for the respondents, with the result that your petitioner is justified in arguing that respondents' representation of those Rules to this Honorable Court is deliberately false. The applicable Rules are cited and discussed on page 8 of the printed Brief for Appellant and Appendix in the Court of Appeals, nine extra copies of which have been lodged with this Honorable Court, under Argument IV., *"The Costs Taxed Against Appellant By The Clerk Of This Court Were Not Allowable And The Judgments Based Thereon Are Void"*, which Argument is as follows:

> The controversial Bills of Costs taxed for the appellees were filed by Ida O. Creskoff, Esquire, Clerk of this Court, in violation of Rule 10 (4) of this Court for lack of service and lack of proof of service thereof upon your appellant.

The taxing of the said costs was in violation of this Court's Rule 35 (1), (2) and (4) because the costs were unallowable by reason of unnecessary printing, and, if allowable, your appellant was deprived of his right to be heard thereon by the Court in advance of judgment.

In view of the foregoing, it is not equitable or legal that the Judgments should have any effect; and the circumstances under which they were wrongfully entered, justify the granting of relief from their operation, pursuant to F.R.C.P. Rule 60 (b).

4. In view of the applicable Rules quoted hereinabove in the immediately preceding paragraph 3, there can be no question that, in taxing the costs, the Clerk of the Court of Appeals violated every Rule. The first Rule violated by the Clerk was No. 10(4), pursuant to which respondents' Bills for Costs should not have been received for filing; and thereupon said Clerk violated the other Rules in connection with the taxing of unallowable costs, thus denying petitioner the right to be heard thereon.

5. For the respondents to invoke the doctrine of *res judicata* herein, is actually absurd unless, of course, they can cite legal authorities to support the proposition that the repeated refusal to adjudicate issues renders those issues *res judicata*. It is apparent from the Record that the decisions of the lower Courts constituted nothing more than refusals to adjudicate. Under such circumstances, is it not offensive for counsel to try to get the highest judicial tribunal in the United States to sanction their invoking of that doctrine?

The Respondents' Brief Exhibits a Lack of Respect For This Honorable Court.

By presenting the unauthorized County Court type of Brief which they did, instead of a real brief in opposition pursuant to the Rules of this Honorable Court, the respondents' attorneys have evidenced their lack of respect because their Brief has so distorted the facts material to the consideration of the Questions Presented, and so confused the Reasons Relied on for the Allowance of the Writ, that your petitioner has been obliged to reply to irrelevant, impertinent, false and scandalous matter, which could have been obviated with a proper brief in opposition.

The Petitioner Asks Very Little of the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Your petitioner has unsuccessfully beeen seeking the right to be heard on the issue of the fraud and misconduct of his adversaries in their procurement of judgments for unallowable costs in advance of notice to him and the right to be heard thereon, after the entry of which they attached his bank accounts without notice to him and subsequently obtained full satisfaction secretly from the garnishee, and did not even satisfy the judgments against him. The lower Courts have stubbornly refused to afford him said right to be heard (a right which they have not given him and cannot take away).

The only question thus before this Honorable Court of last resort is whether or not it will afford him the

protection and enforcement of his rights under the Constitution and laws of the United States.

The fundamental issue before this Honorable Court is actually that simple.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner.

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania.

Dated: 25 July 1963.